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MOTION FILED

SEP 1 - 2006

No. 05-1382

IN THE
SUPREME COURT OF THE UNITED STATES

ALBERTO R. GONZALES,
ATTORNEY GENERAL,

Petitioner,

v.

PLANNED PARENTHOOD
FEDERATION OF AMERICA,
INC., ET AL.

Respondents.

MOTION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

MOTION TO FILE AMICUS CURIAE BRIEF OUT OF TIME

AMICUS CURIAE BRIEF
OF
RONALD W. MEYER

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AMICUS CURIAE BRIEF
OF
RONALD W. MEYER

RONALD W. MEYER
Attorney at Law
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
(602) 279-1663

COMES NOW, Ronald W. Meyer and pursuant to Rule 37 of the Rules of the Supreme Court, requests that he be given leave to file an *Amicus Curiae* Brief.

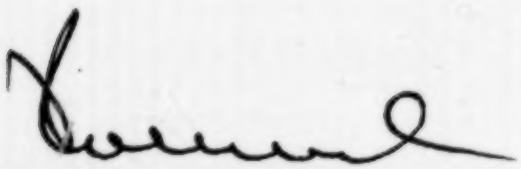
Pursuant to Rule 37 of the Rules of the Supreme Court, a request for consent to file the *Amicus Curiae* Brief was sent to Helene Krasman, Esq. of Planned Parenthood Federation of America, Inc. (Copy attached as Exhibit "A"). Planned Parenthood Federation of America, Inc. consented to filing the *Amicus Curiae* Brief (Exhibit "B").

A request for consent to file the *Amicus Curiae* Brief was sent to Paul D. Clement of the United States Department of Justice (Exhibit "C"). Paul D. Clement, on behalf of the United States Department of Justice declined to grant consent.

The issues raised in this *Amicus Curiae* Brief have not been addressed by the Petitioner, Respondent or any of the other *Amicus Curiae* Briefs.

DATED this 30th day of August, 2006.

LAW OFFICES OF RONALD W. MEYER



RONALD W. MEYER
Attorney at Law
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012
(602) 279-1663

LAW OFFICES
OF
RONALD W. MEYER

3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
(602) 279-1663

Ronald W. Meyer

August 25, 2006

VIA FAX ONLY: Fax No.: (202) 293-4349

Helene Krasman, Esq.
Planned Parenthood Federation of America, Inc.
1780 Massachusetts Avenue, N.W.
Washington, DC 20030

Re: Alberto R. Gonzales, Attorney General vs. Planned Parenthood Federation of America, Inc.
Supreme Court of the United States
Case No. 05-1382

Dear Ms. Krasman:

I am going to file an *amicus curiae* Brief on behalf of myself supporting the position of the Petitioner.

Pursuant to Rule 37 of the rules of the Supreme Court of the United States, I am requesting consent to file the *amicus curiae* Brief.

I realize that the Brief must be filed out of time, and that an appropriate Motion must be filed before the Supreme Court of the United States.

The Brief will be mailed for filing by Federal Express on or before September 1, 2006 and any consent would be conditioned upon filing the Brief by that time.

Sincerely yours,

RONALD W. MEYER

RWM/jg

EXHIBIT "A"

Planned Parenthood®
Federation of America, Inc.

434 West 33rd Street, New York, NY 10001
Phone 212.541.7800 • Fax 212.247.6811
www.plannedparenthood.org

Public Policy Litigation & Law

August 28, 2006

Via facsimile and U.S. Mail

Ronald W. Meyer
Law Offices of Ronald W. Meyer
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
Fax No. (602) 222-4996

RE: Gonzales v. Planned Parenthood, Case No. 05-1382

Dear Mr. Meyer:

On behalf of Respondents Planned Parenthood Federation of America and Planned Parenthood Golden Gate in the above-captioned case, we consent to your request to file an amicus brief on behalf of the Petitioner out of time, provided that the brief will be mailed for filing by Federal Express on or before September 1, 2006, as stated in your request.

Sincerely,

Helene T. Krasnoff

EXHIBIT "B"

LAW OFFICES
OF
RONALD W. MEYER

3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
(602) 279-1663

Ronald W. Meyer

August 25, 2006

VIA FAX ONLY: Fax No.: (202) 514-8844

Paul D. Clement, Esq.
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Room 5614
Washington, DC 20530-0001
ATTN: Emily Spadoni

Re: Alberto R. Gonzales, Attorney General vs. Planned Parenthood Federation of America, Inc.
Supreme Court of the United States
Case No. 05-1382

Dear Ms. Spadoni:

I intend to file an *amicus curiae* Brief on behalf of myself in support of the position of the Petitioner.

Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, I am requesting the Petitioner to consent to file the *amicus curiae* Brief.

Sincerely yours,

RONALD W. MEYER

RWM/jg

EXHIBIT "C"

No. 05-1382

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Attorney at Law
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
(602) 279-1663

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Attorney at Law
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
(602) 279-1663

COMES NOW, Ronald W. Meyer and requests this Court to grant leave to file an *Amicus Curiae* Brief out of time.

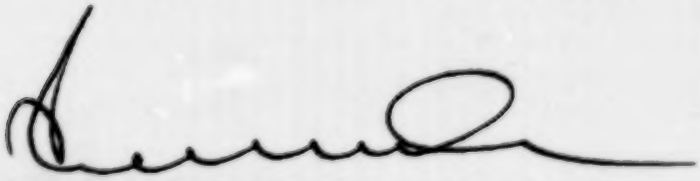
The *Amicus Curiae* Brief was due August 3, 2006, the date that the Brief of Petitioner was due. There is no prejudice to the Petitioner because its Brief has already been filed.

The Respondent, Planned Parenthood Federation of America, Inc. has consented to filing an *Amicus Curiae* Brief under the conditions set forth in its consent and will not be prejudiced by the late filing of the *Amicus Curiae* Brief.

The issues raised by the *Amicus Curiae* Brief are important and crucial to the Court's resolution of the issues raised in this case.

DATED this 30th day of August, 2006.

LAW OFFICES OF RONALD W. MEYER



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MISCELLANEOUS:

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Partial Birth Abortion Ban Act of 2003.....

INTEREST OF AMICI CURIAE

Ronald W. Meyer is a citizen of the State of Arizona and a citizen of the United States of America and has a concern about living in a society which does not protect innocent human life and has an interest in the Courts properly applying the principles of *Roe vs. Wade*.

This is a brief in support of the Petitioner and in defense of the Partial Birth Abortion Ban Act of 2003.

No counsel for a party authored this *Amicus Curiae* Brief in whole or in part and no one other than the Amici Curiae has contributed money or services to the preparation or submission of this *Amicus Curiae* Brief.

SUMMARY OF ARGUMENT

This *Amicus Curiae* Brief raises two issues.

1. The Court in *Planned Parenthood Federation of America, Inc., et al. vs. Alberto R. Gonzales*, (9th C.A. 2006) 435 F.3d 1163, failed to properly apply the principles of *Roe vs. Wade*, 410 U.S. 113, 93 S.Ct 705, 35 L.Ed.2d 147 (1973), wherein this Court established that a woman does not have an absolute right to terminate her pregnancy at whatever time, in whatever way or for whatever reason, and that a State has an interest in protecting potential life.

2. The Court in *Planned Parenthood Federation of America, Inc., et al. vs. Alberto R. Gonzales*, (9th C.A. 2006) 435 F.3d 1163, failed to apply the

constitutional principle of balancing the rights of the State to protect potential life versus the right of privacy of the mother and failed to properly balance the right to life of the unborn child versus the right of privacy of the mother.

ARGUMENT

I

ROE VS. WADE

This Court in *Roe vs. Wade*, 410 U.S. 113, 93 S.Ct 705, 35 L.Ed.2d 147 (1973), clearly established that a woman does not have an absolute right to terminate her pregnancy at any time, in whatever way and for whatever reason that she alone chooses. The Court also clearly held that the State has an interest in protecting not only the health of the mother in maintaining medical standards but also in protecting potential life. Furthermore, the right of privacy cannot be absolute.

> "On the basis of elements such as these, appellant and some *amici* argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or

no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some State regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some *amici* that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (vaccination); Buck v. Bell, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927) (sterilization)."

93 S.Ct. at Page 727,
410 U.S. at Page 153

Even thought the specific issue was not before this Court, this Court in *Roe vs. Wade* clearly indicated that the State interest in protecting potential future human life included regulating the surgical aspects of abortion in a more stringent manner or even to prohibit abortions in the later stages of pregnancy.

> "The asserted state interests are protection of the health and safety of the pregnant woman, and protection of the potential future human life within her. These are legitimate objectives amply sufficient to permit a State to regulate abortions as it does other surgical procedures, and perhaps sufficient to permit a State to regulate abortions more stringently or even to prohibit them in the late states of pregnancy."
>
> 93 S.Ct at Page 735
> 410 U.S. at Page 172

The decision in *Planned Parenthood Federation of America, Inc., et al. vs. Alberto R. Gonzales*, as well as previous cases has resulted in a situation where there is abortion on demand and that there is a total absence of any protection for the potential life of the unborn child. The State has been totally prohibited from exercising its interests in protecting that potential life.

Allowing the termination of a life that has all of the mental, emotional and physical attributes of a human being but is still in the womb of the mother rather than out of the womb of the mother violates the principles and spirit of *Roe vs. Wade*.

States and the United States Government, collectively referred to as States, have great latitude through the democratic process of their legislatures to define the type of society that citizens wish to reside in. Many states, like Arizona, have passed extensive laws protecting animals and preventing cruelty and reckless killing of animals.[1] The citizens of Arizona have decided that abusing animals and recklessly killing animals violates their sense of decency and they do not want to live in a society that would tolerate that conduct.

Ironically, a child which has all of the attributes of a human being that is only weeks away from delivery and therefore obtaining "person status" has less rights than a dog or a cat, and can be killed by grotesque procedures prohibited by the Partial Birth Abortion Ban Act. Under the Arizona Statutes, those procedures could not be used against animals.

Under the present status of the law, a person using the procedures of a partial birth abortion on a dog or a cat could be convicted of a felony crime but if performed on an unborn child is within the law.

---

[1] A.R.S. §13-2910.

Whether you believe that the unborn child is a human life or adopt the philosophy of the Planned Parenthood Federation of America, Inc. that the unborn child is potential life, the State has an interest and a right to protect that life from the abuse of the Partial Birth Abortion Ban Act.

Obviously, the limitation on the State's interest is the Constitutional Right of individuals. That raises the issue of who has Constitutional Rights. *Roe vs. Wade* was no help on this issue. In spite of undisputed medical evidence of the emotional, mental and physical development and capabilities of the unborn child, the Court held that an unborn child is not a person under the Constitution.

Decisions without a factual basis never resolve issues. The classic example is *Dred Scott vs.* Standford, 19 Howard 431, 15 L.Ed 691 (1857) wherein the Court held that a negro was not a person under the Constitution but was property. There is no more basis to hold that a negro is not a person under the Constitution as there is to hold that an unborn child is not a person under the Constitution.

The Court in *Roe vs. Wade* was reluctant to engage in theological discussions as to when life begins. Understanding that reluctance, this Court must address the issue of when life is protected under the Constitution. An artificial standard of whether the child is in or without the womb of the mother is totally inadequate in light of the advancing medical science and technology that is present today.

All persons concede that the unborn child is life. All persons concede that that life is at a minimum potential human life. Some contend that it is human life.

Besides recognizing that a State has an interest in protecting life, potential human life or human life, the Court must adopt a better definition of person which properly reflects the reality of that life.

II

BALANCING RIGHTS UNDER THE CONSTITUTION

The challenge of balancing the State interest in legislating in a particular area which affects the Constitutional Rights of an individual is no stranger to this Court.

For purposes of this Amicus Curiae Brief, one example will be cited. There is nothing more revered in this country than freedom of speech. Yet, no one would contend that the freedom of speech is absolute. This Court has been called upon to balance the rights of a State to regulate freedom of speech as part of its police powers to promote safety on streets and sidewalks, regulate the use of public areas, protect the privacy of other individuals, etc. *Huggins vs. Nashville Labor Relations Board*, 424 U.S. 507, 96 S.Ct. 1029, 47 L.Ed.2d 196 (1976). *Poulos vs. New Hampshire*, 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed.1105 (1953).

The essential prerequisite in each case is that the Court must delineate the rights of the State versus the individual or the rights of the respective individuals and then applying constitutional principles balance those rights.

This Court would never sanction the resolution of freedom of speech by holding that a State has unlimited rights to inhibit speech or conversely, that a person has unlimited public free speech and can say anything anywhere, at anytime, under any circumstance.

Unfortunately, the Courts have taken this very approach in the abortion case. Contrary to accepted constitutional principles and contrary to the precepts of *Roe vs. Wade*, Courts subsequent to *Roe vs. Wade* have in effect held that the State has no interest in regulating any aspect of abortion other than the health of the mother and that the unborn child has no rights. This principle would not be acceptable in discussing other rights under the Constitution and should not be acceptable in dealing with rights of privacy and abortion.

CONCLUSION

1. This Court must reverse the Ninth Circuit in *Planned Parenthood Federation of America, Inc. vs. Alberto R. Gonzales* and hold that the State has a legitimate interest and right to regulate partial birth abortions and that the Partial Birth Abortion Ban Act of 2003 is constitutional and constitutionally balances

the interest of the State, the unborn child and the right of privacy of the mother.

2. This Court reestablished the principles of *Roe vs. Wade* that a woman does not have a right to abortion on demand and that the State has a right to protect human life or potential human life in the womb.

3. This Court established that life in the womb of a mother whether it be human or potential human life is entitled to some protection under the Constitution.

4. Establish a procedure that issues of abortion are resolved by balancing the rights of the State versus the privacy rights of a mother and the rights of an unborn versus the privacy rights of the mother.

Dated: August 30, 2006.

Respectfully submitted,

Ronald W. Meyer
Attorney at Law
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012
(602) 279-1663